STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SCOTT A. FALKIEWICZ, II and BRITTNEY FALKIEWICZ, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

and

SCOTT A. FALKIEWICZ, II AND BRITTNEY FALKIEWICZ, minors,

Appellees,

v

NINA JEAN FALKIEWICZ,

Respondent-Appellant,

and

SCOTT ALAN FALKIEWICZ,

Respondent.

UNPUBLISHED
September 24, 1999

Nos. 211588
Wayne Circuit Court
Family Division
LC No. 94-315226

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FAMILY INDEPENDENCE AGENCY,

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v

SCOTT ALAN FALKIEWICZ,

Respondent-Appellant,

and

NINA JEAN FALKIEWICZ,

Respondent.

Nos. 212301
Wayne Circuit Court
Family Division
LC No. 94-315226

Before: Gribbs, P.J., and O'Connell and R.B. Burns*, JJ.

PER CURIAM.

In Docket No. 211588, respondent Nina Falkiewicz (respondent-mother) appeals as of right from an order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(ii), (g), and (j); MSA 27.3178(598.19b)(3)(b)(ii), (g), and (j). In Docket No. 212301, respondent Scott Falkiewicz (respondent-father) appeals as of right from the same order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(h) and (j); MSA 27.3178(598.19b)(3)(h) and (j). The appeals have been consolidated for this Court's consideration. We affirm.

The trial court did not abuse its discretion in denying respondent-mother's motion to withdraw her no-contest plea to the court's assumption of jurisdiction over the minor Scott. *In re Zelzack*, 180 Mich App 117, 126; 446 NW2d 588 (1989). The record does not support respondent-mother's claim that her no-contest plea was induced by unkept promises. Petitioner agreed to increase visitation between respondent-mother and the minors and to dismiss the termination petition that was then pending with regard to the minor Brittney. Although respondent-mother was never given unsupervised

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* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

off-site day-long visits with the children, her visits were increased. Moreover, petitioner dismissed the pending termination petition as it promised. There is nothing in the record of the plea proceeding to support respondent-mother's claim that the visits were to be held off-site or that petitioner would not be permitted to file another termination petition at some point in the future. Even with the increased visitation, respondent-mother was unable to demonstrate that she could properly care for her children. Additionally, it is clear that the trial court had jurisdiction over the minor Scott because respondent-mother failed to protect one of Scott's siblings from repeated and extensive sexual abuse by respondent-father. Indeed, the parties stipulated that jurisdiction over Scott was proper under *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973) ("How a parent treats one child is certainly probative of how that parent may treat other children."). Under these circumstances, the trial court did not abuse its discretion in refusing to allow respondent-mother to withdraw her no contest-plea to the trial court's assumption of jurisdiction over Scott.

Next, contrary to the claim raised by both respondents, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, respondents failed to show that termination of their parental rights was clearly not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). Thus, the trial court did not err in terminating respondents' parental rights to the children. *Id.* at 473-474.

Finally, having reviewed the record and weighed the appropriate factors, we conclude that respondent-father was not denied due process by the trial court's failure to have him transported from prison to be physically present at the termination hearing. *In re Vasquez*, 199 Mich App 44, 46-47; 501 NW2d 231 (1993). An incarcerated parent does not have an absolute right to be present at termination proceedings. *Id*. at 48. Indeed, the availability of telecommunications "militates against securing the physical presence of an incarcerated parent at a [termination] hearing as a matter of due process." *Id*. at 49. The risk of erroneous deprivation of respondent-father's interest in his parental rights was not increased by his physical absence from the termination hearing in this case. Respondent father was connected to the proceedings by speakerphone and was represented at the proceedings by counsel, who cross-examined the witnesses and presented a closing argument on respondent-father's behalf. Respondent-father was given the opportunity to present evidence in support of his claim that his parental rights should not be terminated. Under these circumstances, respondent-father was not denied due process of law.

Affirmed.

/s/ Roman S. Gribbs
/s/ Peter D. O'Connell
/s/ Robert B. Burns